

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re

JOYCE ANN PETTIS,

on

Habeas Corpus.

B218905

(Los Angeles County  
Super. Ct. No. A033363)

PETITION for writ of habeas Corpus. Norman W. Gordon, Judge. Writ granted.  
Order denying parole is reversed and the matter is remanded with directions.

Munger, Tolles & Olson, Randall G. Sommer and Laura D. Smolowe for  
Petitioner.

No appearance for Respondent.

Petitioner, Joyce Ann Pettis, pleaded guilty to second degree murder on March 17, 1987. She had hired a man to kill her husband. At a hearing held on July 31, 2008, the Board of Parole Hearings (the Board) denied Pettis's parole. On September 17, 2009, Pettis filed in this court a petition for writ of habeas corpus. A review of the record before us indicates Pettis has served more than the requisite term in prison and poses no danger to society. Accordingly, we order that her petition be granted.

### **FACTUAL AND PROCEDURAL BACKGROUND**

#### *1. Pre-conviction history.*

##### *a. Personal history.*

Pettis was born on February 12, 1947 in Beckley, West Virginia. Pettis's parents divorced when Pettis was in grade school and her mother then married Wayne Apple. Between the ages of nine and twelve, Pettis was sexually molested by Apple. Since she rarely saw her biological father, Pettis grew up without "much self-esteem" and no "really . . . positive male role models." Pettis was, however, close to her mother. The two women maintained contact throughout Pettis's incarceration until May 2008, when her mother passed away.

Pettis's family moved to California in 1962. Pettis dropped out of high school in 1964, when she was a junior. Over the next 15 years Pettis married and divorced twice. She has a 43-year-old daughter from her first marriage with whom she has not had contact since 1996 or 1997. Pettis met Ralph Pettis in a bar in 1979. They lived together for five years, then married in 1984.

##### *b. Contacts with law enforcement.*

Prior to the commitment offense, Pettis had limited contact with law enforcement for relatively minor offenses. In April 1985 she was arrested for burglary, but the charge was dismissed. At a later date, Pettis was arrested for receiving stolen property and was convicted of the misdemeanor. For that offense, Pettis was sentenced to three days in jail and granted probation for 36 months. Pettis's only other contact with the law occurred

when she was arrested in 1986 for disorderly conduct arising out of a domestic dispute with Ralph Pettis. For that offense, Pettis spent two days in county jail.

*c. The commitment offense.*

In 1986, Joyce and Ralph Pettis<sup>1</sup> lived in Long Beach, California. Their relationship was tumultuous at best. It was plagued by the excessive use of alcohol and violence. Ralph Pettis would start by verbally abusing Pettis, then he would “go into physical [abuse].” Ralph and Joyce fought frequently. Joyce would receive “[b]lack eyes, a lot of black eyes [and] bruises, because he [would] get [her down] and when he [would] get [her] down he would kick [her].” Joyce was taken to the hospital on at least one occasion; Ralph had kicked her so hard in the side that she had to be checked for broken bones. On another occasion, Ralph was arrested for assault with a deadly weapon after he threatened Joyce with a shotgun.

Joyce Pettis had tried to leave Ralph. In 1985 she went to Canada where her mother lived. Ralph found out where she was and threatened to go up to Canada and murder Joyce’s mother if Joyce did not come back. Joyce decided to return to Ralph. On another occasion, Joyce went to Tucson where she was living in a motel and working in a small restaurant. Ralph again found out where Joyce was and, on that occasion, went to Tucson to bring her back.

In approximately November 1985, Joyce Pettis began a clandestine romantic affair with her neighbor and co-defendant, Raymond Kelsch. Joyce was drinking heavily at the time and that played a role in her decision to have an affair. Joyce referred to the relationship as “[a] drunken[,] short affair.” She indicated that, “[a]t the end [she] was drinking probably half a gallon of vodka a day.”

In March 1986 Joyce, feeling trapped in her marriage to Ralph, agreed with Kelsch that something had to be done. Kelsch suggested that Joyce hire someone to kill Ralph and Joyce agreed. Kelsch then introduced Joyce to co-defendant Jacob Ama, who

---

<sup>1</sup> At times we refer to the parties by their first names. This is done, not out of any disrespect, but for clarity.

agreed to shoot Ralph for a fee of \$1,000. Joyce indicated that, at the time, she “didn’t know what else to do. [She had] tried to get away from him,” but had been unable to do so. Joyce indicated she had been “beat[en] so many times. To [her] and the alcohol and [her] thought process[es] it was the only way out for [her].” She indicated that, at that time, “[i]t was like both [she and Kelsch] agreed.”

On or about March 7, 1986, Joyce was out with Ralph. They fought and both were arrested. Ralph used money from Joyce’s bank account to bail himself out of jail, but left Joyce in jail. Joyce was angry and, upon her release the next morning, she contacted Kelsch and told him that she wanted to move forward with the plan.

After Joyce gave to Ama a \$200 down payment, he shot and killed Ralph Pettis on March 9, 1986.

d. *Pettis’s plea.*

Joyce pleaded guilty to second degree murder and the trial court sentenced her to 16 years to life in prison.

2. *Pettis’s conduct during incarceration.*

Pettis has been nothing short of a model prisoner. In the year since she was last denied parole, she has remained discipline free and has continued self-help programs. In addition, she has been doing clerical work for the Forestry Department. Both in the past and at the time of the hearing, she received “exceptional” job ratings.

With regard to education, Pettis received her GED in February of 1988. Since that time, she has worked at acquiring a vocation. She has completed courses in Office Services, Information Technology and Word Processing.

Pettis has participated in several self-help programs. She has been and still is an active participant in the “Long-Termers Organization,” an organization that provides support for women serving lengthy or indefinite terms of confinement. In her file it is indicated that she has been “a member in good standing of the Long Termers’ Organization from January 2002 . . . . She has shown herself to be very motivated, positive, and encouraging to the entire group. She has always been extremely pleasant

and willing to participate. Joyce [s]hould be commended for the effort she has put forth into this program.”

Pettis has also participated in a “ ‘Breaking Barriers’ ” seminar. Breaking Barriers is “[a] program which will provide her with the tools and alternatives necessary for changes. It prepares [an inmate] to make positive choices regarding her lifestyle both at CIW and on her re-entry into society.” In her file it is indicated that Pettis should “be commended for her commitment and completion of the 40 hours training in the Breaking Barriers [P]rogram.” In addition, Pettis has successfully participated in a “ ‘Victim Impact Seminar’ ” and a “Victim[’s] Services” domestic abuse class.

Perhaps most importantly, Pettis has been an active member of Alcoholics Anonymous (AA) and Al-Anon since 1988. She has memorized and lives by the 12-step program. She has not had an alcoholic beverage for 23 years. When one of the commissioners asked Pettis why she had not had an alcoholic beverage while in prison, Pettis responded, “Because I know why I’m here, I know what that would lead to.” Although she suffered from symptoms of withdrawal, Pettis quit drinking “cold turkey.”

With regard to discipline, Pettis has suffered “no 115[’s] at all while [she has] been incarcerated.” She has one 128A which occurred on February 8, 1996 when she covered the vent in her cell. The commissioners noted that, for all intents and purposes, Pettis has been discipline free for her over 20 years of incarceration.

Pettis’s latest psychological examination was performed in June 2008. The report indicated that she is “ ‘on the clinical and risk management scale which were in the low range. [Her] total score on the [relevant test] indicated that she has risk factors that place her in the low range for future violence.’ ” In addition, Pettis feels great remorse for her crime. She stated that “she wished [it] never happened and that she will have to live with it for the rest of her life.” She told one prison psychologist, “ ‘I feel so bad about it. I took someone else’s life and I can’t change it. It’s with me everyday that it’s my fault that he’s dead.’ ”

### *3. Pettis's Parole proceedings.*

The Board noted that Pettis had been “offered a place of residence at Crossroads which is located in Claremont, California” and that she had been “offered a job in the Prep Program.” Pettis would be working 30 hours a week and being paid \$10 per hour. The Prep Program is in Los Angeles and, when one of the commissioners inquired, Pettis indicated she would be taking public transportation to and from the Program. When a commissioner asked Pettis if that was “going to be enough” for her to “get [her]self established,” Pettis responded that she hoped it would, but that she also had a job offer from a company in Irvine. In response, a commissioner indicated that Crossroads was usually limited to a six[-]month residency and that Pettis needed to “establish something further down the road.” Pettis indicated that her plan “B” was to reside in a community called “A New Way of Life” in Los Angeles. Pettis continued, “I also can go through Walden House [and] I also have a letter from A Time for Change.” When a commissioner then asked Pettis what she planned to do when she had to leave Crossroads or A Time for Change, Pettis replied, “Well, from my understanding, I can stay like at Crossroads or the other places until I can get on my feet. So[,] if I’m staying there and I’m working I can save enough money and then advance to other jobs.”

During argument by counsel for Pettis, counsel emphasized that “[t]he previous Board recommended that Ms. Pettis continue self-help, stay disciplinary-free, earn positive chronos, [and] firm up and expand on her parole plans.” Counsel continued, “We’ve shown today that she has completed and satisfied in an excellent manner, everything the Board has requested of her.”

Pettis herself then addressed the Board. She stated: “I’m not the same person that I was 22 years ago. I’ve worked very, very hard to educate myself, make myself to where I can be self-sufficient on the outside . . . . I can’t change what happened. I’m deeply sorry for the death of Mr. Pettis. I do want to make one statement that was brought up earlier about I supposedly asked to have a detective killed. I never said that.

That came from a co-defendant trying to save his butt. I'm hoping you'll see all the good things that I did and find me suitable for parole and give me a chance."

After deliberating, the Board concluded Pettis was "not suitable for parole and would pose an unreasonable risk of danger to society or a threat to public safety if released from prison." The presiding commissioner emphasized that the crime, a "very brutal, cold-fashioned" murder for hire, was the result of a conspiracy between Pettis and the man she was having an affair with. The commissioner then addressed Pettis and said, "You had all the opportunity in the world to say, 'No, I don't want this to happen.' But you were angry, you had been drinking again and you allowed it to go forward. Which really puzzles this [p]anel about the motive. Yes, you were angry. The [d]istrict [a]ttorney brought up financial gains. But the other thing[,] too, we feel that alcohol played a vital part in this, . . . and it was not necessarily domestic violence or abuse [that] was the main factor that[] [lead] into this. " The commissioner noted that "a lot of those episodes were strictly driven by [Joyce's] alcohol consumption." At the same time, the commissioner indicated that Pettis and Ralph Pettis were, in a sense, "co-contributors to this whole thing happening and [Joyce] could have left at any time." The commissioner addressed Pettis and stated: "[T]he bottom line is you had the opportunity to cease at any time, to call this thing off but yet you didn't. Even up to the date that it took place." With regard to the domestic violence Pettis had referred to, one commissioner addressed Pettis and stated: "[T]he records sort of reflected that that was a joint thing with the alcohol that contributed to a lot to this and it may not necessarily have been domestic violence which is something I think you indicated it did occur. And that's not to say that it didn't happen but you played a part into it as well."

With regard to Pettis's incarceration, the Board indicated she had "programmed exceptionally well." The Board recognized that Pettis had "vocations" in Clerical, Information Technologies and Office Services. With regard to her behavior, Pettis had no 115's and only one minor 128 chrono. One of the commissioners noted that this was "really remarkable for someone that's been down for 21 years." But, once again, the

Board referred to Pettis's alcoholism. It noted that she had missed some AA meetings and believed this was cause for concern. One commissioner stated: "[O]nce you get back out there's a lot of stressors that are going to come your way . . . . [You] could easily fall back into that, especially when, you know, as we go back and I bounce back now to your social history . . . . There could be a lot of things that could be of a stress to you that would have you go back into the . . . drinking."

Referring to the psychologist's report, one of the commissioners indicated that "he believed that [Pettis] . . . [had] come to term" with the underlying cause of the commitment offense. The commissioner, however, was "still questioning whether or not [Pettis] really underst[ood] why this took place." The commissioner continued: "Maybe it's not what you perceive it to be and what you told him which is more alcohol related than it is domestic violence [related]."

As to Pettis's parole plans, one commissioner stated: "Maybe I did not make myself clear and I'm going to try to redo this because I think your parole plans still need to be firmed up some. First and foremost, you have four possible places to go. You need to narrow them down. . . . [I]f you want to go to Crossroads which is your number one choice, then you need to be able to say, [O]kay, I'm going to go to Crossroads here for three months, four months, six months, whatever and then I'm going, they'll help me get a job if I lived there now. From what I gathered today and I could be wrong, is that you were planning to go to Crossroads and then go to Prep to work. Well, that's a long way and I'm not sure that you know . . . how you're going to get there and what transportation is available."

In conclusion, one of the commissioners stated: "Bottom line is, this [p]anel made one finding, that you really need to continue programs so that you can determine what the causative factors were that actually caused the . . . domestic violence which is what you felt and really transpired [in]to this. But there are other things. Alcohol played a major, major role. But, there may have been some other things, else involved as well and that[]



only you can make that determination. Now, this is going to be a one-year denial and hopefully you'll be able to answer those things at your next hearing."

The second commissioner made the following remarks: "Ms. Pettis, . . . [g]o in and look at all the records in here . . . . I think you would have to agree you were not a very nice person at the time of this crime. You were foul-mouthed, out of control with alcohol, everything else. We're not saying that you weren't the victim of some domestic violence. That's not what we're saying here today. We're saying we don't believe that maybe it was quite to the extent that you indicated but maybe it was. But it was a dysfunctional relationship definitely between both of you. Both of you had major, major problems with alcohol. You would even do things I think to get them going sometimes from what I could tell from the records. So I'm saying you played a part in this dysfunctional relationship. So, for you to put a ten on the domestic violence of you being the victim of domestic violence is for the reason that Mr. Pettis isn't alive today. Not alive, able to go to NA, AA classes themselves. And then to put a seven on the alcoholism that was going on in the relationship was a concern for me. It really was."

The presiding commissioner then made the following recommendations: "Again, remain disciplinary-free, that shouldn't be a problem for you. Continue to program and, as we said before, look at all those reasons and everything that we gave you today. Go back and review your transcript. It may be a disappointment for you now but it will serve you well later. And again on the parole plans, you know, you all get them one A, one B, etcetera, but . . . to work over here, live here and go there. Just firm them up a little bit."

#### 4. *Habeas Corpus proceedings.*

On March 5, 2009, Pettis filed a petition for writ of habeas corpus in the trial court. Citing *In re Rosenkrantz* (2002) 29 Cal.4th 616, 667 and *In re Lawrence* (2008) 44 Cal.4th 1181, 1205-1206, the court concluded there was some evidence to support the Board's finding that Pettis presented an unreasonable risk of danger to society and was unsuitable for parole.

On September 17, 2009, Pettis filed a petition for writ of habeas corpus in this court.

### ISSUE

The question presented is whether some evidence supports the Board's determination Pettis poses a current threat to public safety and is thus unsuitable for parole.

### DISCUSSION

#### 1. *The applicable law.*

“Pursuant to statute, the Board ‘shall normally set a parole release date’ one year prior to the inmate’s minimum eligible parole release date, and shall set the date ‘in a manner that will provide uniform terms for offenses of similar gravity and magnitude in respect to their threat to the public . . . .’ (Pen. Code, § 3041, Subd. (a).)”<sup>2</sup> (*In re Roderick* (2007) 154 Cal.App. 4th 242, 262.) Release on parole is thus “the rule, rather than the exception.” (*In re Smith* (2003) 114 Cal.App.4th 343, 351.) A parole release date must be set unless the Board determines that public safety requires a lengthier period of incarceration. (*In re Lawrence, supra*, 44 Cal.4th at p.1202; § 3041, subd. (b).) However, every inmate has a constitutionally protected liberty interest in parole decisions ordered by the Board. (*In re Rosenkrantz, supra*, 29 Cal.4th at p. 661.)

In determining suitability for parole, the Board must consider certain factors specified by regulation. Circumstances tending to establish unsuitability for parole are that the inmate (1) committed the offense in an especially heinous, atrocious, or cruel manner; (2) has a previous record of violence; (3) has an unstable social history; (4) has sexually assaulted another individual in a sadistic manner; (5) has a lengthy history of severe mental problems related to the offense; and (6) has engaged in serious misconduct while in prison. (Cal. Code Regs., tit. 15, § 2402, subd. (c); *In re Lawrence, supra*, 44 Cal.4th at p. 1202, fn. 7.)

---

<sup>2</sup> All further statutory references are to the Penal Code unless otherwise indicated.

Circumstances showing suitability for parole include that the inmate (1) does not possess a record of violent crime committed while a juvenile; (2) has a stable social history; (3) has shown signs of remorse; (4) committed the crime as the result of significant stress in his or her life, especially if the stress had built over a long period of time; (5) committed the crime as a result of battered woman syndrome; (6) lacks any significant history of violent crime; (7) is of an age that reduces the probability of recidivism; (8) has made realistic plans for release or has developed marketable skills that can be put to use upon release; and (9) has engaged in institutional activities that suggest an enhanced ability to function within the law upon release. (Cal. Code Regs., tit. 15, § 2402, subd. (d); *In re Rosenkrantz*, *supra*, 29 Cal.4th at p. 654.)

The foregoing factors are general guidelines, and the Board must consider all relevant information.<sup>3</sup> (Cal. Code Regs., tit. 15, § 2402, subd. (b); see *In re Rosenkrantz*, *supra*, 29 Cal.4th at p. 655.) However, the fundamental consideration is public safety. (*In re Lawrence*, *supra*, 44 Cal.4th at p. 1205.)

“ ‘A parole date . . . is a prospective benefit that is conditioned on the inmate’s continued good performance and subject to review and withdrawal for cause by the [Board]. While the board cannot rescind a parole date arbitrarily or capriciously, it does not abuse its discretion when it has some basis in fact for its decision. . . . [T]he [Board] must strike “a balance between the interests of the inmate and of the public.” [Citation.] . . . . Accordingly, . . . due process requires only that there be *some evidence*

---

<sup>3</sup> “Such information shall include the circumstances of the prisoner’s social history; past and present mental state; past criminal history, including involvement in other criminal misconduct which is reliably documented; the base and other commitment offenses, including behavior before, during and after the crime; past and present attitude toward the crime; any conditions of treatment or control, including the use of special conditions under which the prisoner may safely be released to the community; and any other information which bears on the prisoner’s suitability for release. Circumstances which taken alone may not firmly establish unsuitability for parole may contribute to a pattern which results in a finding of unsuitability.” (Cal. Code Regs., tit. 15, § 2402, subd. (b).)

to support a rescission of [a] parole [date] by the [Board.]’ ” (*In re Rosenkrantz, supra*, 29 Cal.4th at p. 656, italics in original.)

*2. Application of the law to Pettis’s case.*

Applying the relevant factors to Pettis’s case, it cannot be said that the commitment crime was committed in an especially heinous or atrocious manner. All murders are heinous and the murder of Ralph Pettis was no more so than any other.

Prior to her incarceration, Pettis led a tumultuous, violent life. She and Ralph apparently fought constantly. However, since being incarcerated and becoming sober, Pettis has suffered virtually no discipline and, in particular, no discipline for violent conduct. This fact supports Pettis’s assertion that her behavior leading up to the commitment crime was driven by a combination of Ralph’s abuse and her dependence on alcohol. Pettis has no history of severe mental problems and her performance during her more than 20 years in prison has been flawless with the exception of one minor 128A.

With regard to circumstances showing suitability for parole, Pettis has no record of criminal conduct, violent or otherwise, as a juvenile. Although it cannot be said that she has a “stable” social history, this was due in large part to her dependence on alcohol. She has, however, been sober for over 20 years.

Pettis has shown signs of remorse for the murder of Ralph. She told one psychologist that she “[felt] so bad about it” and that, although she couldn’t change it, she remembered “everyday that [it was her] fault” that he was dead.

It also appears that Pettis committed the crime, at least in part, as the result of significant and long term stress. She indicated she had received “[b]lack eyes, a lot of black eyes,” and that Ralph would knock her down, then kick her. On one occasion Ralph actually threatened Pettis with a shot gun. Although, as one commissioner commented, Pettis may not have been the nicest person during those years, a “foul mouth” does not excuse the physical abuse suffered by Pettis at Ralph’s hands. On the record before us, it appears Pettis committed the murder, at least in part, because she was the victim of battered woman syndrome.

Pettis is also “of an age that reduces the probability of recidivism.” She is 62 years old and, as noted above, has been sober for over 20 years. The chance that she would again become involved in a relationship like the one she had with Ralph is slim at best.

Pettis has made realistic plans for her release. She has investigated several transitional homes in which she would be allowed to live and has two solid job offers. Moreover, while in prison she developed marketable skills; she is proficient in office services, information technology and word processing.

Finally, Pettis has engaged in institutional activities which will assist her in functioning within the law upon release. Perhaps most important is her commitment to the AA 12-step program. She also participated in Al-Anon and the “Long Termers Association.”

Review of the record before us reveals *no evidence* in support of the Board’s denial of parole. Pettis’s present mental state, her stellar performance during her over 20 years of incarceration, her commitment to the Alcoholics Anonymous 12-step program, her feelings of remorse and her parole plans all lead to the conclusion that she is suitable for parole. Most importantly, at this point in her life Pettis poses no danger to public safety. (*In re Lawrence, supra*, 44 Cal.4th at pp. 1205-1206.)

### **DISPOSITION**

The petition for writ of habeas corpus is granted. The Board of Parole Hearings’ July 31, 2008 order denying Pettis parole is reversed and the matter is remanded with directions to conduct a new suitability hearing within 30 days of the issuance of the remittitur in this matter. At that hearing, the Board is directed to find Pettis suitable for parole unless new evidence of her conduct or a change in her mental state subsequent

to her 2008 parole hearing supports a determination that she currently poses an unreasonable risk of danger to society if released on parole.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

KITCHING, J.

We concur:

KLEIN, P. J.

ALDRICH, J.